THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.17087 of 2003

Dated:30.07.2007

Between:

K.Venkata Reddy S/o K.N.Narasimha Reddy

..... PETITIONER

AND

The APSRTC, represented by its Managing Director, Musheerabad, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION No.17087 of 2003

ORDER:

This writ petition is filed questioning the action of the third respondent in not paying hire charges for the period commencing from 16.06.2003 till date in respect of the petitioner's vehicle bearing No.AP 03/U 3263 plying on the route notified by the first respondent-Corporation (Corporation) as per the agreement dated 22.02.2001, without prior notice or order and for a consequential direction to the respondents to pay hire charges for the period commencing from 16.06.2003 till date in respect of the said vehicle as per the agreement dated 22.02.2001.

Brief facts are that pursuant to the notification issued by the Corporation, proposing to hire buses from private operators to ply on notified routs, the fourth respondent gave an application to ply the bus belonging to him, and accordingly, the second respondent, on behalf of the Corporation, entered into an agreement with the fourth respondent on 03.02.1999 to ply the bus in the route (a) Chittoor-Penumuru, via

Pulikallu, (b) Chittoor-Devalampet via Pulikallu, and (c) Chittoor to Chinnamareddy Kandriga. The total area covered under the said route is 340 kms, as per the said notification. The said agreement is for a period of two years commencing from 05.02.1999 and the fourth respondent operated his vehicle bearing No.AP 03/T 3922 on the above route for some time, but as the vehicle run by him is an old one, the Corporation directed the fourth respondent to ply a new vehicle. Accordingly, a notice dated 19.10.2000 was issued directing him to replace the existing vehicle with a better vehicle. As the fourth respondent was not in a position to produce new vehicle or better vehicle, he requested the petitioner, who is the owner of the bus bearing No. AP 03/U 3263, to join him as a partner so that he can recommend for transfer of the agreement. Accordingly, the fourth respondent made a representation, dated 11.01.2001, to the second respondent requesting him to accord sanction for change of agreement in favour of the petitioner, and the permission was also accorded. Pursuant thereto, petitioner herein produced a new vehicle bearing No.AP 03U 3263, A.L.2001 Model, and after inspection of the vehicle by the authorities and after following the required formalities, petitioner entered into an agreement with the Corporation on 22.02.2001 and started plying the bus in the above route with effect from 23.02.2001.

However, it appears a joint survey was made, during the course of which it was decided that the length of the above route is only 308.20 kms, but wrongly it was mentioned as 340 kms in the notification issued earlier, and thus there is a variation of about 31.08 kms. In the light of the same and as the petitioner started plying the vehicle with effect from 23.02.2001 and the amounts were paid calculating the distance as 340 kms, the Corporation has issued a memo dated 04.08.2001, directing the petitioner to pay the excess amount of Rs.14,023/- paid to him, in three instalments. Accordingly, as the demand to refund the excess amount was genuine, petitioner paid the same to the third respondent. However, another notice dated 08.04.2002 was issued to the petitioner

stating that during the period from 05.02.1999 to 04.02.2001 the fourth respondent plied his vehicle in the above route and the Corporation has paid him hire charges calculating the distance of the route as 340 kms and because of the variation, the excess amount of Rs.1.65,809/- paid to the fourth respondent was directed to be paid by the petitioner. Questioning the said notice dated 08.04.2002, petitioner filed the present writ petition.

A counter-affidavit is filed on behalf of respondents 1 to 3. It is stated in the counter-affidavit that the petitioner and the fourth respondent agreed for change of agreement and the Corporation accorded permission to the petitioner to ply the vehicle in the above route and hence the petitioner is also liable to pay the said amount.

Heard the learned counsel for the petitioner, learned Standing Counsel for APSRTC, and the learned counsel for the fourth respondent.

The facts are not in dispute. Admittedly, the fourth respondent introduced the petitioner to the respondent-Corporation and thereafter, the Corporation entered into a fresh agreement with the petitioner for the period from 23.02.2001 to 22.02.2004 to ply new vehicle bearing No.AP 03/U 3263 in the route mentioned in the annexure i.e., from Chittoor to Penumuru via Pulikallu, etc. From this it is clear that for all purposes, petitioner's contract commenced only on 22.02.2001 and if at all any amounts are paid to the fourth respondent, the Corporation cannot say that the petitioner has to pay those arrears because the petitioner was introduced to the Corporation by the fourth respondent and the Corporation has to recover the said amount only from the fourth respondent for the period during which the fourth respondent plied his vehicle. When the said defect was detected in the joint survey conducted by the Corporation and it was concluded that the distance of the above route is only 308.20 kms, but not 340 kms and addressed a letter to the petitioner directing him to pay excess hire charges of

Rs.14,023/- paid for the period from 23.02.2001 to 04.08.2001, petitioner complied with the said direction and paid the said amount also. However, for the period for which he did not ply the bus and for the lapses on the part of the fourth respondent, it is not known as to how the Corporation can fix the liability on the petitioner, as if the petitioner and the fourth respondent belong to a partnership firm. Except the fact that the petitioner was introduced by the fourth respondent to the Corporation, petitioner has nothing to do with any of the activities of the fourth respondent. For all purposes, the agreement entered into by the petitioner with the Corporation on 22.02.2001 is a fresh agreement to ply the bus in the above route and as he refunded the excess hire charges paid to him for the period from 23.02.2001 to 04.08.2001, in my considered view, he is not liable to pay the alleged excess amount for the period prior to 22.02.2001. It is only the fourth respondent, who is liable to refund the excess amount to the Corporation. Instead of proceeding against him, the Corporation issued notice dated 03.09.2001 fixing the liability on the petitioner.

For the foregoing reasons, the writ petition is allowed and the notice bearing No.01/359(24)/2001-CTR-2 dated 08.04.2002 directing the petitioner to pay excess amount of Rs.1,65,809/- is hereby quashed. There shall be no order as to costs.

At this juncture, learned counsel for the fourth respondent submitted that the fourth respondent stopped plying the bus from 04.02.2001 and the joint survey was made subsequent thereto and the second respondent passed the order on 05.04.2001 stating that the distance of the said route is only 308.20 kms but not 340 kms and that the joint survey was not done in the presence of the fourth respondent. Hence, if the Corporation fixes up the said liability on the fourth respondent and try to recover the said amount for the period from 05.02.1999 to 04.02.2001, he may be permitted to question the same.

It is unnecessary for this Court to accord permission, as this Court

has not given any finding on that aspect. The only question determined in this writ petition is as to whether the petitioner is liable to pay the amount of Rs.1,65,809/- as directed by the Corporation. It is always open for the fourth respondent to seek redressal of the grievance if any, if he so chooses.

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30.07.2007

Note : Furnish C.C. in one week.

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